



Region 1  
490 N. Meridian Road  
Kalispell, MT 59901

**DECISION NOTICE  
and  
Finding of No Significant Impact  
for the  
South Whitefish Range Conservation Project  
November 24, 2015**

**Description of the Proposed Action**

Montana Fish, Wildlife & Parks (FWP) proposes to purchase two conservation easements (CEs) on properties owned by the F. H. Stoltze Land and Lumber Company (Stoltze) north of the communities of Whitefish and Columbia Falls, Montana. The South Whitefish Range Conservation Project includes two properties: 1) the Haskill Basin property is 3,020 acres of forested land north of the City of Whitefish, and 2) the Trumbull Creek property is 7,150 forested acres northwest of Columbia Falls. Both properties are at the south end of the Whitefish Mountains. The CEs would be purchased in two separate transactions: the Haskill Basin CE in early 2016 and the Trumbull Creek CE in late 2016, depending upon the final commitments of funding resources and other approval processes.

The primary objectives of the CEs are to:

- Protect the municipal water supply for the community of Whitefish.
- Maintain working forests and insure that they will continue to be sustainably managed.
- Conserve important fish and wildlife habitat.
- Maintain public recreation access.

**Location:**

The Haskill Basin property is bounded by the Flathead National Forest on the north, developments associated with Whitefish Mountain Resort and Iron Horse to the west, and private developments on the south and southeast. The Trumbull Creek property is surrounded by the Flathead National Forest on the north and a mix of private and national forest properties on the other three sides.

**Public Involvement – Scoping**

FWP joined the Trust for Public Land and the City of Whitefish in an open house and public meeting on June 17, 2014, that the City hosted to introduce the Haskill Basin project to community leaders and other interested parties to discuss the proposed CEs and to solicit feedback on any issues and concerns the public might have. Over 80 people attended that meeting.

Additionally, FWP visited the Columbia Falls City Council on April 6, 2015, and held an open house in Columbia Falls on April 28, 2015, to introduce the Trumbull Creek project to interested parties in that community.

FWP also participated in tours of both properties with the Forest Legacy Subcommittee, a part of the Department of Natural Resources and Conservation State Forest Stewardship Steering Committee (Haskill Basin on July 30, 2013, and Trumbull Creek on August 5, 2014) and received support from the subcommittee and the full steering committee for both projects.

Additional opportunities for public input and involvement were also provided through numerous Whitefish City Council meetings in 2014 and 2015, where the topic of the resort tax increase to partially fund the Haskill Basin CE was discussed. Some of these meetings had between 60-80 people in attendance.

### **Draft Environmental Assessment and Public Comments**

FWP released the draft environmental assessment (EA) for public review on October 27, 2015, and asked for public comments through November 22. FWP scheduled a public hearing in Whitefish on November 9, 2015, at 6:30 p.m. FWP sent postcards announcing the public comment period to approximately 161 individuals and organizations. FWP ran legal ads that described the proposed project, the availability of the draft EA, and the public hearing information in four local newspapers. The draft EA was posted on FWP's official web site. FWP also distributed a press release to all the local and regional media outlets that described the project, availability of the draft EA, and the public comment timeline, and another release with a reminder of the date and location of the public hearing in Whitefish. The draft EA document was available at the Region One headquarters in Kalispell and was also available online for people with internet access or through internet service at public libraries.

### **Summary of Public Comments**

Overall, FWP received 56 public comments on the project during the draft EA public comment period from individuals and organizations: 6 as testimony at the public hearing and 50 additional comments submitted in writing or email. Twenty-nine of the comments supported and none opposed the project. The remaining 27 comments, along with 15 people who expressed support for the project, identified questions, issues, or concerns that they wanted to see addressed in the final environmental assessment, which fell into 12 different categories.

### **FWP Responses to Public Comments**

- 1. Single-track trail network on the property.** The most comments received were regarding the failure of the EA to acknowledge the off-road trail network that currently exists on the property and the level of public use that it receives by a variety of recreational users. Comments documented that the trail system has been in existence for many years, that single-track, off-road trails provide a different recreational experience than logging roads, and that this is a unique opportunity because it's so accessible for so many people. They pointed out that the conservation easement only guarantees dispersed recreation, and the management plan allows mountain biking, and asked that the conservation easement and

management plan be changed to assure this trail use continues into the future. They also identified the problems associated with an unmanaged trail system and the benefits that would result from a managed trail system. There were also several comments concerned about maintaining multiple uses and others that wanted to restrict some user groups.

**Response:** FWP was aware that this use was occurring on the property, but was unaware of the extent of such use. Public comment clearly demonstrated that the single-track, off-road trail on the property is extensive and heavily utilized by a wide variety of recreational users. The preliminary results from our baseline inventory, while not documenting the miles of existing off-road trail, do support the numerous comments that the trail network is substantial and heavily used. However, the Stoltze Open Lands Policy that has covered this property for the last 20-plus years clearly states that construction of trails on their property is not allowed. In addition, some comments identified that such trail use can cause erosion, impacts to fish and wildlife habitat, and social conflicts if not properly managed. Use of that trail network on private land is a privilege that Stoltze has allowed as a “neighborly accommodation.”

Based on this public comment, this decision document acknowledges the extensive use that currently exists on the trail system, its importance to the community, and problems associated with the current situation. However, we also recognize that the construction of the trail system was never authorized by Stoltze. FWP will clarify the language in the management plan, but not in the direction requested in these comments. We propose to change the management plan to make it clear that motorized and nonmotorized, mechanized use is allowed only on the existing road network, which encompasses more than 25 miles of road on both properties, and which links to additional miles on the adjoining public road networks. The management plan will be modified to secure mechanized travel, both motorized and nonmotorized, only on the existing road network. Nonmechanized, dispersed travel is allowed across the property per the terms of the open lands policy and would continue under the proposed management plan. Stoltze will retain the exclusive right to manage and limit public use on the existing single-track, off-road trails and any off-road trails proposed or created in the future. Under the conservation easement described in the EA, Stoltze retains the exclusive right to grant recreational trail easements on the conservation easement lands (Section II.B.4.g). While intensive public use may be allowed on the property in the future under the terms of the conservation easement, the impact of that use must be balanced with the other purposes of the conservation easement, namely, water quality and supply for the City of Whitefish, sustainable forest management, and fish and wildlife habitat, which many people also identified as important reasons for this proposed conservation easement.

The Liaison Committee described in the draft conservation easement would be established to deal with the problems associated with the unmanaged trail system and the potential conflicts among various user groups, that several people identified. As stated on page 50 of the EA, the purpose of the Liaison Team is to “provide a forum to review issues related to this Easement and will prepare and, as agreed upon, revise the MRMP.” Please see the issues and responses to the Liaison Team later in this document.

- 2. Public access points to the conservation easement lands.** The next most common issue was regarding legal public access points to the property. People expressed concern that

users are currently parking on private property lands surrounding the Stoltze property and trespassing across private neighborhoods to recreate on the property. They were also concerned that establishment of the conservation easement would increase levels of public use. Comments suggested that access points be mapped and signed and that dedicated parking areas that are managed for public access would help with the current trespass issues. One person asked that any developed parking areas include space for horse trailers, and another requested that the county or state consider paving the Trumbull Creek Road for at least the first two miles to improve the condition of the road.

**Response:** Page 22 of the EA describes current access points to the property. In response to public comment, FWP has produced a map that shows the locations of these points and the availability of parking at each site, and attached it to this document. Any other access must be with the permission of neighboring landowners or it constitutes unauthorized trespass subject to civil penalties under the law. FWP does not have authority to enforce trespass laws other than those associated with hunting and fishing, but we can commit to placing signs at these legal access points, which are identified on the attached map.

Page 28 describes the proposed action as maintaining recreational opportunities, and FWP is concerned that development of additional parking may promote increased recreational use, which is not the intent of this proposal. However, we recognize that these conflicts exist and are committed to working with the landowner and local community to find solutions that work for all parties and are consistent with the proposed conservation easement and management plan.

The Trumbull Creek road is a private road owned by F.H. Stoltze Land and Lumber Company, and the conservation easement does not change the status of the road or the responsibilities of those that own or have legal rights to use that road. However, that could be an issue discussed by the Liaison Team (see page 53 of the EA) if levels of public use increased beyond existing levels because of the proposed conservation easement.

3. **Liaison Team makeup.** The next most common comment was from people who asked that the makeup of the Liaison Team described in the conservation easement be changed to include public members to better represent recreation interests, to reduce the representation of the landowner, and to have a different number of members than four. There was also a request to better describe the Liaison Team process.

**Response:** The purpose and makeup of the Liaison Team is described in Section II.E of the conservation easement (page 50 of the EA). This committee is comprised of two members from the landowner because the land may be sold in two separate parcels and each owner would need a place on the team. It also includes a representative of FWP and the City of Whitefish, the two co-holders of the conservation easement. As owners of the land and holders of the conservation easement, respectively, these parties have legal rights and responsibilities under the terms of the conservation easement and are legally bound as signatories of the management plan, something that does not pertain to members of the recreating public. We expect the management plan to be changed over time to better represent current knowledge and conditions on the ground (page 72 of the EA). However, such changes require the consent of all signatories to the management plan and, as a state agency, FWP is required to submit such proposals for public review as we have done with this proposed project.

The Liaison Team meets at least once each year at a location near the property to provide a forum to review issues related to this easement and will prepare and, as agreed upon, revise the management plan. FWP first used this approach on the Thompson/Fisher conservation easement in 2004 and has found it very effective. Each meeting is announced through news releases and emails to everyone that commented on the original project proposal. In the case of these two proposed conservation easements, that would include notifications to the 56 people that have commented on this project to announce a meeting that would probably alternate between Whitefish and Columbia Falls. Each of those meetings includes an opportunity for public comment on any issues pertaining to the conservation easement, management plan, or other general issues of concern.

4. **Definition of dispersed recreation and allowable public use.** Two people asked for a clarification of our use of the term “dispersed recreation,” which is the right secured by the conservation easement and used to limit the types of organized, commercial recreation that may occur on the property under the management plan. Another commented that dispersed recreation does not include recreational use on trails.

**Response:** We view dispersed recreation as all the activities that may take place on the land that are not developed or managed to concentrated use. Single-track, off-road trails for mountain biking do not fit under this definition because they need to be managed to keep the trail free of brush and debris, and to reduce soil erosion. While other uses such as hiking and horseback riding may use the existing trail network, such a system of trails is not required for those activities as it is for mountain biking. Nonmechanized, dispersed travel would continue to be allowed across the property per the terms of the open lands policy included in the proposed management plan.

5. **Importance of recreation to the tourist-based businesses that supported the resort tax increase that is helping to pay for the conservation easement.** Two people expressed concern that the commercial community was on board for raising the resort tax because of the potential for additional sales due to recreational opportunities. Another person identified that it’s a variety of recreational opportunities that bring tourists to Whitefish.

**Response:** Allowing Stoltze the exclusive right to regulate continued mechanized use of the single-track, off-road trail network is unlikely to change the amount of money earned from the overall tourism industry or the resort tax. It might have some impact to businesses associated with mountain biking, but even that will be substantially mitigated by the development of the new, single-track trail that will be granted to the City of Whitefish on the Haskill Basin property under the conservation easement.

6. **Two people asked if motorized use will be allowed to continue on the property.**

**Response:** The Stoltze Open Lands Policy, which is incorporated into the management plan, specifically allows the use of some off-highway vehicles, but only on established road systems. However, Section II.B.2 of the conservation easement allows Stoltze the right to restrict motorized use of roads on the conservation easement lands.

7. **One person asked for clarification for the ability of Stoltze to close the land for up to three years.**

**Response:** Page 23 of the EA outlined how and why Stoltze could suspend public access to the land. “Stoltze also would retain their existing right to temporarily suspend public access if either the risk of landowner liability increases or the cost of liability insurance increases beyond established market rates.” Under the terms of the proposed CEs and associated management plan, public access could remain suspended, with the exception of the nonmotorized public recreation trail corridor that would be granted to the City of Whitefish under a separate agreement, on the Haskill Basin property, until a solution could be found that would protect the landowner against increased liability or increased liability protection cost resulting from continued public recreational access and use. However, after three years the City of Whitefish and/or FWP would have the right to purchase the underlying fee ownership of the property to restore public recreational access; Stoltze would retain the right to manage and harvest timber on the property.

- 8. City of Whitefish water supply.** Several people commented on the importance of the Haskill Basin conservation easement for securing the City water supply. One person suggested that the water supply needed to be secured and wider buffers would be appropriate, while a contrasting comment emphasized the importance of actively managing the riparian buffer. Another felt the EA did not adequately assess the risk of contamination to the water supply that would result if the project was not completed and the benefits in protecting human health from completing the project.

**Response:** The EA did not discuss the need to secure the water supply because this conservation easement does not change the responsibility or the ability of the City of Whitefish to secure the water supply. Instead, it insures “the right of the City to inspect, repair, renovate, remove, maintain, or replace the utility improvements, including water intake and diversion structures, piping, and other ancillary structures that the City owns and maintains under separate easement agreements with Landowner” (page 45 of the EA).

Page 18 of the EA discusses the benefits of the proposed conservation easement on Haskill Basin to the City water supply. “Protection of the Haskill Basin drainage by the proposed CE would protect the City of Whitefish’s primary municipal water resource from subdivision and residential development. Such action could have negatively impacted the City’s two remaining intakes on Second and Third Creeks and forced the City to invest in a costly new water supply alternative.” The No Action Alternative only states that conversion of either property could negatively impact water resources. We agree that the risks and benefits of the proposed conservation easement were understated in the EA. The City water supply from First Creek was abandoned years ago because of bacterial contamination resulting from developments and wastewater treatment procedures above that water intake. The City of Whitefish is investing \$7.7 million to purchase the conservation easement in order to “protect the City’s municipal water quality and supply” (page 42 of the EA, Section II.A.1. of the conservation easement). If the Haskill Basin property were to be developed for residential or other incompatible uses, the risk of contamination would possibly require the City to stop using Haskill Creek as a source of drinking water or take other actions to protect the water supply. Section 4.4, Risk and Human Health/Safety, in the EA is hereby modified to acknowledge the risks described above.

The riparian management commitments outlined in the management plan in Section III.G.2 (page 68 of the EA) are more restrictive than current Montana law requires, but still allows

Stoltze to actively manage the riparian forest. This prescription was developed by Stoltze to describe their current management practices, which have proven effective at maintaining water quality for the City's municipal water supply.

- 9. Draft status of the conservation easement and management plan.** One individual expressed concern that the draft conservation easement is being presented in its final form before the EA has been completed.

**Response:** The conservation easement and management plan were negotiated with two other parties over the last 12 months. We can, and are willing to, discuss potential changes with the other two parties; however, FWP cannot unilaterally make changes to either of those documents without agreement from both the City of Whitefish and Stoltze. Consequently, the EA evaluates only two alternatives: purchase this proposed conservation easement and associated management plan or do not acquire the rights associated with those documents.

- 10. Easement baseline report.** One individual commented on the importance of the baseline report that will be prepared to provide an accurate representation of the physical and biological condition of the land and its physical improvements as of the date of the conservation easement, and the importance of getting someone that understands western Montana forests.

**Response:** FWP agrees that this is an important document and those are essential qualifications. Ecological Solutions Group in Stevensville, Montana, has been contracted to complete this work. They have done other similar reports for FWP and have consistently produced outstanding documents approved by both the landowner and FWP. The baseline report will be finalized prior to closing the conservation easement transaction and signed by Stoltze to acknowledge that they agree that it is an accurate representation of the current property.

- 11. Cost of the project.** One person expressed concern that the price being paid for this conservation easement makes timber ground unaffordable for companies or individuals interested in acquiring and managing such properties.

**Response:** The value of the conservation easement was determined by a qualified appraiser following standards set by the federal government. Their determination is based on a comparison of prices paid for other similar properties with and without conservation easements on them. This proposed purchase doesn't set markets, but rather is based upon current market values. In addition, both purchases are 25% below the estimated value of similar real estate transactions.

- 12. Impact on affordable housing availability in Whitefish.** One person expressed concern that eliminating 3,020 acres from future development in Haskill Basin would increase the problem of a lack of affordable housing in Whitefish.

**Response:** Page 16 in the EA documented that both proposed conservation easements would support multiple goals of Flathead County's Growth Policy (2012) in promoting the preservation of critical fish and wildlife habitat, preserving the area's unique outdoor amenities and quality of life, and recognizing the heritage of outdoor recreation and timber

activities that provide economic benefits to the county. In addition, Haskill Basin project is being funded and will be jointly held by the City of Whitefish.

In response to the concern over affordable housing, the Haskill Basin property is highly unlikely to ever offer any opportunity for future affordable housing if this conservation easement is not acquired, given the market value of that property. However, FWP completed additional analysis on the impact of removing 3,020 acres of land from the future base of developable land surrounding Whitefish. We used the state cadastral records to estimate the amount of undeveloped land within 2.5 miles from the Whitefish City limits, a distance that encompasses all of the proposed Haskill Basin conservation easement and represents an area of 102,000 acres. A little more than 73,000 acres of that has no structures and is available for future residential or commercial development. Thus, the proposed Haskill Basin conservation easement would reduce the availability of land for future development by only 4% (3,020 acres/73,000 acres), leaving 69,980 acres or more than 100 square miles for future development.

#### **FWP RECOMMENDED ALTERNATIVE AND FINAL DECISION RECOMMENDATION**

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that FWP pursue the completion of the South Whitefish Range Conservation Project and recommend that the FWP Commission approve the proposed purchase of the Haskill Basin conservation easement now, and the proposed Trumbull Creek conservation easement when the conservation easement and associated management plan are finalized and other due diligence completed. Both actions will also require the approval of the Montana Land Board at an upcoming meeting.

Through the MEPA process, FWP found no significant impacts on the human or physical environments associated with this proposal. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

Noting and including the changes to the draft EA and associated documents stated above, the draft EA as modified by this decision document will become the Final EA. FWP believes the completion of this project is in the best interests of providing clean water for the City of Whitefish, while also balancing the needs of working forests, fish and wildlife habitat, and public recreation opportunity.



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Jim Williams  
Regional Supervisor

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11/24/2015  
Date



